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September 11, 2014

Via ECF

Magistrate Judge A. Kathleen Tomlinson
United States District Court – EDNY
814 Federal Plaza
Central Islip, New York 11722

Re: *Official Committee of Unsecured Creditors of Exeter Holding, Ltd. v. Linda Haltman, et al., Case. No. 13-cv-05475-JS-AKT*

Dear Judge Tomlinson:

This firm is special litigation counsel for Plaintiff Gary Herbst (the “Plaintiff”) in his capacity as plan administrator for the confirmed plan of Exeter Holding, Ltd. in the above-captioned proceeding.

Plaintiff writes in response to Mr. Weingard’s September 8, 2014 motion to prevent Plaintiff from presenting certain evidence and for reasonable costs and attorney’s fees associated with making that motion (Docket No. 71, the “Motion”). Mr. Weingard made the Motion pursuant to Rule 37(c)(1) of the Federal Rules of Civil Procedure. That rule directs, in pertinent part, that “the court, *on motion and after giving an opportunity to be heard*: (A) may order payment of the reasonable expenses, including attorney’s fees.” F.R.C.P. 37(c)(1)(A) (emphasis added). In light of this rule, it is unclear whether the Motion can be properly made by letter rather than on notice, pursuant to Section III. A. 1 of Your Honor’s Individual Practice Rules.

In light of this ambiguity, Plaintiff respectfully requests the Court direct whether the Motion was submitted appropriately as a letter, in which instance, Plaintiff respectfully requests that he be granted a short extension to respond in kind. If the Court finds the Motion was improperly submitted as a letter, Plaintiff requests that the Court direct Mr. Weingard to withdraw his Motion and serve it with the proper notice.

If Your Honor would like to discuss this matter, I will gladly make myself available for a call at Your Honor’s convenience.

Sincerely,

/s John D. Roesser

cc: Opposing Counsel (via email)